
Charanjit Kaur Vs Govt. Of NCT Of Delhi & Others

Original Application No. 739 Of 2021, Miscellaneous Application No. 2979 Of 2021

Court: Central Administrative Tribunal Principal Bench, New Delhi

Date of Decision: Nov. 30, 2021

Acts Referred:

Constitution Of India, 1949 " Article 226, 227

Hon'ble Judges: Manjula Das, J; Mohd. Jamshed, Member (A)

Bench: Division Bench

Advocate: Yogesh Kumar, Anmol Pandita, H.D.Sharma

Final Decision: Dismissed

Judgement

Manjula Das, J

1. The applicant has filed this OA seeking the following relief(s):-

1. To quash and set aside the Impugned order dated 04.03.2020 passed by the Respondent No. 04/Disciplinary Authority (Annexure A-1) along

with Charge Memorandum issued by the Respondent No. 04/Disciplinary Authority Dated 26.12.2018 (Annexure A-5), And;

(ii) To quash and set aside the Impugned orders dated 18.12.2020 & dated 16.03.2021 passed by the respondent No. 03/Appellate Authority, passed in

the Appeal and Review Appeal respectively (Annexure A-2) & (Annexure A-3), And;

(iii) To direct the respondents to grant promotion along with consequential benefits & seniority thereon to the Applicant from the date when her juniors

resumed their duties to the post of Grade-I (DASS) in the Government/Respondents departments, And;

(iv) To allow the OA with exemplary cost on the respondents for causing undue harassment to the Applicant, And;

(v) To pass any other appropriate suitable orders/directions to the Respondents which the Hon'ble Tribunal may deem fit and proper in the facts

and circumstances of the case for furtherance of the ends of justice.

2. Brief facts of the case are that applicant vide order dated 18.08.1987 was appointed as Grade-IV (DASS)/LDC under respondent No.2. On

14.07.1998 she was granted promotion to the post of Grade-III (DASS)/UDC and was further promoted to the post of Grade-II (DASS)/Head Clerk

on 07.11.2012. She was posted at Zeenat Mahal SKV Jafrabad, Delhi w.e.f. 22.11.2012. She was issued memo on 24.12.2012 on the ground of her

habitual late coming to office asking her to submit her explanation which was replied to by her on 27.12.2012. Thereafter, another memo dated

03.01.2013 was issued to her alleging absence from duty w.e.f. 26.12.2012. On 01.08.2013 applicant was transferred to Department of Industries,

Govt. of NCT of Delhi, Patparganj, Delhi to the post of Grade-II (DASS)/Head Clerk. On 19.09.2018 respondent No.2 initiated process for promotion

of Grade-II (DASS) employees to the post of Grade-I (DASS) in which applicant was also within the zone of consideration. Thereafter, Disciplinary

Authority (DA), respondent No.4 issued charge memo dated 26.12.20-18 to her. On denial of charges by the applicant, the DA appointed an Inquiry

Officer who in turn submitted his report on 09.10.2019 holding the charges as proved. It is submitted that respondent No.4 vide order dated 27.12.2019

issued promotion orders to the post of Grade-I (DASS), ignoring applicant, while her juniors have been promoted. It is further submitted that DA vide

order dated 04.03.2020 imposed penalty of reduction to a lower stage in the time scale of pay for a period of two years with cumulative effect upon

the applicant. Subsequently, she was transferred to the Directorate of Education and posted in GBSSS Mandoli Extn., Delhi. On 25.08.2020 applicant

filed an appeal before the Appellate Authority (AA), respondent No.3 which in turn rejected the same on 18.12.2020. Review Appeal was also filed

by the applicant and the same was also rejected vide order dated 16.03.2021. Hence this OA.

3. Respondents filed the counter affidavit opposing the OA. It is submitted that the disciplinary inquiry was conducted adhering the due procedure, and

several opportunities were granted to the applicant to defend her case. Instances of alleged misconduct have also been cited, like the applicant did not

submit her explanation regarding marking of attendance by overwriting on the observation of the HoS concerned; and disobedience of directions of

HoS. It is contended that it is a serious matter when an employee refuses to receive an official communication as it amounts to anarchy and is not

conducive to smooth functioning of an organisation.

4. Heard Sh. Yogesh Kumar with Sh. Anmol Pandita, learned counsel for applicant and Sh. H.D.Sharma, learned counsel for respondents.

5. According to Lord Diplock, in the case of Council of Civil Service v. Minister of Civil Service [1985 AC 374] “Administrative action is subject to control by judicial review on the following three grounds

i) illegality;

ii) irrationality

iii) procedural impropriety Principle of proportionality could also be a ground.

6. Laying down the scope of judicial review, the Hon'ble Apex Court in Union of India v. P.Gunasekaran, [(2015) 2 SCC 610] observed as under:

“Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary

proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge no. I was accepted by the disciplinary authority and

was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first

appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the

evidence. The High Court can only see whether:

- a. the enquiry is held by a competent authority;
- b. the enquiry is held according to the procedure prescribed in that behalf;
- c. there is violation of the principles of natural justice in conducting the proceedings;
- d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and

merits of the case;

(Emphasis supplied)

8. In *B.C. Chaturvedi v. Union of India & Others*, [(1995) 6 SCC 749] the Hon'ble Apex Court on the scope of judicial review held as under:

“Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to

ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of

the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the

inquiry was held by a competent officer or whether the inquiry was held by a competent officer or whether rules of natural justice are complied with.

Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and

authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of

proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives

support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of

judicial review does not act as appellate authority to re- appreciate the evidence and to arrive at its own independent findings on the evidence. The

Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural

justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based

on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the

conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.”

9. The Hon'ble Apex Court in Ashif Hamid v. State of J&K, [(1989) Supp. 2 SCC 364] & Ekta Shakti Foundation v. Govt. of NCT of Delhi,

[(2006) 10 SCC 337] held as under:

"While exercising the power of judicial review of administrative action, the Court is not the appellate authority and the Constitution does not

permit the Court to direct or advise the executive in matter of policy or to sermonize any matter which under the Constitution lies within the sphere of

the Legislature or the executive, provided these authorities do not transgress their constitutional limits or statutory power. (See Ashif Hamid v. State of

J. & K. (AIR 1989 SC 1899), Shri Sitaram Sugar Co. v. Union of India (AIR 1990 SC 1277).

ii) The scope of judicial enquiry is confined to the question whether the decision taken by the Government is against any statutory provisions or is

violative of the fundamental rights of the citizens or is opposed to the provisions of the Constitution. Thus, the position is that even if the decision taken

by the Government does not appear to be agreeable to the Court it cannot interfere.

iii) The correctness of the reasons which prompted the Government in decision making, taking one course of action instead of another is not a matter

of concern in judicial review and the Court is not the appropriate forum for such investigation.

10. In the instant case, we find that the inquiry has been conducted as per the prescribed procedure and the principles of natural justice have been

observed at every stage. The applicant has participated in the inquiry proceedings and has been provided opportunity to defend her case. As such, we

do not accept the plea of learned counsel for the applicant that there has been violation of the procedure in the conduct of the inquiry.

11. In the conspectus of the discussions in the foregoing paras, we do not find any merit in the OA. It is dismissed accordingly.

12. Pending MA stands disposed of accordingly.

There shall be no order as to costs.